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11	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI	
12		
13	GTATE OF ADVICANA	N. P1200 GP20001220
14	STATE OF ARIZONA,	) No. P1300CR20081339
15	Plaintiff,	) Div. 6
1		) DEFEND ANTES OF HECTION TO
16	VS.	) DEFENDANT'S OBJECTION TO ) STATE'S LATE DISCLOSED
17	STEVEN CARROLL DEMOCKER,	) REBUTTAL WITNESSES AND
18	7.0.1	) MOTION TO PRECLUDE
19	Defendant.	
20		)
21	Steven DeMocker, by and through counsel, hereby respectfully objects to the	
22	State's late disclosure of rebuttal witnesses under Rule 15.1(h) and moves this Court to	
23	preclude the late disclosed witnesses. This motion is based on the Due Process Clause,	
24	the Fifth, Sixth, Eighth and Fourteenth Amendments and Arizona counterparts, Arizona	
25	Rules of Evidence, Arizona Rules of Criminal Procedure and the following	
26	Memorandum of Points and Authorities.	
27		

## **Memorandum of Points and Authorities**

Rule 15.1(h) requires the State to disclose rebuttal witnesses "upon receipt" of the notice of defenses.<sup>1</sup> The defense filed its initial notice of defense on July 24, 2009. "Upon receipt" of this filing, the State was required to disclose the names and addresses of all persons whom it intended to call as rebuttal witnesses, together with their relevant written or recorded statements. The rule is mandatory, in requiring that the State "shall" make the required disclosure.

The State did not file the required disclosure until over one year later, on September 15, 2010,<sup>2</sup> in the middle of trial.

Pursuant to Rule 15.7, where a party fails to make a disclosure required by Rule 15 any other party may move to compel disclosure and for appropriate sanctions. The court shall order disclosure and shall impose any sanction it finds appropriate, unless the court finds that the failure to comply was harmless or that the information could not have been disclosed earlier even with due diligence and the information was disclosed immediately upon its discovery. All orders imposing sanctions shall take into account the significance of the information not timely disclosed, the impact of the sanction on the party and the victim and the stage of the proceedings at which the disclosure is ultimately made. Available sanctions include, but are not limited to: (1) Precluding or limiting the calling of a witness, use of evidence or argument in support of or in opposition to a charge or defense.

<sup>&</sup>lt;sup>1</sup> On March 10, 2010, Judge Lindberg also ordered the parties to exchange witness lists by April 12, 2010.

<sup>2</sup> Additional disclosure was required of the State under Rule 15.1(i)(5)(a) for rebuttal witnesses it intended to call for the penalty phase. The State filed this document on February 26, 2010.

The State's late disclosed list of rebuttal witnesses discloses 26 rebuttal witnesses and lists "[a]ll witnesses used in the State's case in chief." Providing this notice in the middle of trial, after over 20 days of testimony, in a case that has been pending for almost two years and had a trial date set a year in advance is clearly sanctionable. The State's innumerable failures to otherwise comply with disclosure requirements is fully developed in the record and need not be repeated. The State will have taken more than double the amount of time to present its case in chief that it originally advised the Court, the defense and the jury. It now proposes a rebuttal witness list that could take as long to complete as its case in chief.

In addition to preparing for the testimony of over 170 witnesses identified by the State's on its witness lists, the defense is now left, in the middle of trial, to prepare for additional newly disclosed witnesses. Some of these witnesses were precluded by prior order of Judge Lindberg and some have privileged relationships with Mr. DeMocker. All of this should have been litigated long ago if the State intended to call these witnesses as rebuttal witnesses.

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1	This Court should preclude the State from calling any witness on the State's late		
2	disclosed rebuttal witness list in its rebuttal case pursuant to Rule 15.7.		
3	DATED this 14 <sup>th</sup> day of October, 2010.		
4	DATED and 14 day of School, 2010.		
5	By: (1)		
6	John M. Sears P.O. Box 4080		
7	Prescott, Arizona 86302		
8	OSBORN MALEDON, P.A.		
9	Larry A. Hammond		
10	Anne M. Chapman 2929 N. Central Avenue, Suite 2100		
11	Phoenix, Arizona 85012-2793		
12	Attorneys for Defendant		
13			
14			
15	ORIGINAL of the foregoing hand delivered for filing this 14 <sup>th</sup> day of October, 2010, with:		
16			
17	Jeanne Hicks		
18	Clerk of the Court Yavapai County Superior Court		
19	120 S. Cortez		
20	Prescott, AZ 86303		
21	COPIES of the foregoing hand delivered this		
22	this 14 <sup>th</sup> day of October, 2010, to:		
23	The Hon. Warren R. Darrow Judge Pro Tem B		
24	120 S. Cortez		
25	Prescott, AZ 86303		
26			
27	1		

Joseph C. Butner, Esq.
Jeffrey Paupore, Esq.
Prescott Courthouse basket

M. M.